BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to investigate whether the zones established in Docket No. C-2516 are appropriate in light of NUSF-26 findings and conclusions.	**Application No. C-3554/PI-112**

QWEST CORPORATION'S INITIAL COMMENTS

Qwest Corporation ("Qwest") submits its initial comments to the *Order Opening Docket* dated February 28, 2006 (*"Order"*) as follows:

Introduction

The relief proposed in the Order is unprecedented and violates the Telecommunications Act and all applicable cost principles. The Order proposes a scheme to drastically reduce the rates for more than 99% of the unbundled network element ("UNE") loops Qwest leases to competitive local exchange carriers ("CLECs") (in Zone 3 towns, loop rates would be reduced by 84%), without any total element long-run incremental cost ("TELRIC") studies supporting either those rates or the new zone configuration. To offset these tremendous losses, the Order purports to "allocate" higher prices to less than one percent of Qwest's UNE loops, without any evidence that the higher priced loops would likely be leased to any CLEC and when common sense suggests that no CLEC would lease loops at such high rates. The proposal fails even to make mathematical sense, much less comply with TELRIC. Moreover, the proposed Unifying Method yields counterintuitive results. The proposed in-town loop rates for small, Zone 3 towns are lower than the rates for large, dense Zone 1 towns. And the

proposed in-town rates for Zone 2's medium-sized towns are less than both Zone 1 and Zone 3. These illogical results should tell the Commission something is wrong. The proposal must be rejected.

The Commission may certainly establish more than three cost-based zones, and may establish rates within those zones, but the establishment of those rates and zones must be made on the basis of TELRIC principles. The Order does not contain and is not supported by any TELRIC-compliant study that establishes costs, or cost differences, among the six proposed zones. Instead, the Order presents a "Unifying Method" for comment that purports merely to reallocate Qwest's hypothetical UNE loop revenue into six zones instead of the current three, based largely on a non-TELRIC study performed in connection with Docket No. NUSF-26. Even this methodology is internally flawed. These errors are so fundamental that no changes can yield a TELRIC-compliant rate. Indeed, there is no current and updated cost study model for Nebraska that is designed to or capable of determining TELRIC-based costs on a sub-wire center level. Ultimately, however, imposing any changes to UNE loop rates will require extensive fact-finding, discovery, and a contested hearing. The Unifying Method represents an impermissible shortcut to proper TELRIC rate-making, and should be discarded.

A final note before addressing the substantive issues in the Order: The facts presented in the Order about the Unifying Method, its underlying methodology, and relevant inputs do not provide enough information for the Commission to make any changes to the current UNE loop rates. At this point in the docket, however, the Commission has only requested comments and reply comments. Qwest assumes it will

be afforded a full and fair opportunity to examine the Unifying Method proposal, conduct discovery, present its own factual testimony and other evidence, and cross-examine the witnesses supporting the Unifying Method, prior to any substantive order in this docket, as required by 47 CFR § 51.505(e)(2) and Nebraska law. To proceed based solely on policy argument, legal argument, and allegations of fact contained in the staff proposal and party comments would be improper.

TELRIC Rate History

Historically, and to comply with the mandates of the federal Telecommunications Act, the Commission has applied TELRIC standards to determine UNE loop rates. In Docket C-2516, the Commission considered hundreds of pages of prefiled testimony from several witnesses and parties, additional hearing testimony from those witnesses, and several cycles of comments, briefs, and arguments regarding the appropriate rates. In addition, some stipulations regarding rates were submitted to the Commission. After that process, and evaluating all of the evidence and stipulations before it, the Commission found that the following unbundled loop prices were "appropriate, cost-based, economically sound, competitively accurate, and based on TELRIC pricing principles,"[1] and ordered them implemented:

	Zone 1	Zone 2	Zone 3
C-2516	$15.14	$35.05	$77.92

In connection with that process, the Commission determined that three zones would be more appropriate than the four zones proposed by staff and its experts, and rejected the

[1] C-2516, Findings and Conclusions, April 23, 2002, p. 24.

rates stipulated to by Alltel and Qwest for Zone 3.

Just a few months later, in connection with Qwest's application for approval to provide interLATA services pursuant to 47 USC § 271, Qwest voluntarily reduced its rates in all three zones to levels twenty percent below the TELRIC-compliant rates that the Commission had approved, in a compliance filing:[2]

	Zone 1	Zone 2	Zone 3
C-2516	$15.14	$35.05	$77.92
Compliance Filing	$12.14	$28.11	$62.49

The Compliance Filing rates are the currently effective rates in Nebraska. In adopting these rates, the Commission made no express finding as to whether the Compliance Filing rates were TELRIC-compliant, but did observe that since (a) Qwest voluntarily reduced its rates below the TELRIC-compliant rates determined by the Commission, and (b) there was "no apparent harm and [possibly] a benefit to Qwest's wholesale customers through the opportunity to have lower rates," the lower rates should be approved.

Despite the fact that Qwest voluntarily lowered its loop rates by twenty percent below the loop rates the Commission found to be TELRIC-compliant, and despite the fact that competitive carriers now receive NUSF support for in-town customers for which Qwest receives no support, some competitive carriers initiated Docket C-3448 seeking even lower rates and greater competitive advantages against Qwest. This Docket carries the requests of the petitioners in Docket C-3448 to a new level. The new rates

[2] C-2516, Order, Compliance Filing Approved in Part and Denied in Part, June 5, 2002. p. 2-3.

proposed in this docket represent a radical change from the existing rates:

	Zone 1		Zone 2		Zone 3	
C-2516	$15.14		$35.05		$77.92	
Compliance Filing	$12.14		$28.11		$62.49	
Proposed Rates	*In-Town*	*Out of Town*	*In-Town*	*Out of Town*	*In-Town*	*Out of Town*
	$10.97	$31.53	$9.33	$93.19	$9.93	$172.95

As noted above, all rates for in-town loops would decrease under this proposal, some dramatically. Qwest's evidence indicates the in-town loops requested by CLECs represent more than 99% of total loops requested. As a result of the disproportionate number of in-town loops, the proposed system virtually guarantees multi-million dollar UNE loop revenue decreases for Qwest. Because these changes are so significant, the Commission must scrutinize the proposal carefully, applying TELRIC principles.

Legal Standards

Section 252(d)(1) of the Telecommunications Act of 1996 (The Act) requires state commissions to establish just and reasonable rates for interconnection and UNEs. Specifically, Section 252(d)(1)(A)(I) mandates that these rates be "...based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the . . . network element." FCC rules define "just and reasonable rates" to be those rates established pursuant to TELRIC principles. 47 CFR §§ 51.503(b)(1), 51.505(a). To establish TELRIC-compliant prices for unbundled network elements, "any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of

establishing rates under this section shall include any such cost study." 47 CFR § 51.505(e)(2).[3]

The TELRIC value of an unbundled network element is "the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements." 47 CFR § 51.505(b). This cost should be measured "based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." *Id.* § 51.505(b)(1). The "forward-looking economic cost per unit" is then determined by dividing the TELRIC for the network element by "the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services." *Id.* § 51.511(a); *see also MCI WorldCom Communications, Inc. v. BellSouth Telecommunications, Inc., -- F.3d --, 2006 WL 1006536* (11th Cir. April 19, 2006). The TELRIC methodology requires that the per unit cost of an unbundled network element be calculated by finding the total cost for the element in a hypothetical most efficient network and dividing by the number of units that will be put into use by the incumbent or a competitive local carrier. *E.g., MCI v. BellSouth,* at 10.

[3] Nebraska cases require similar levels of procedural due process when agencies issue orders affecting rights similar to those at stake in this proceeding. *E.g., McAllister v. Nebraska Dept. of Corr. Servs.,* 253 Neb. 910, 912-13, 573 N.W.2d 143, 146 (1998); *Bauers v. City of Lincoln,* 255 Neb. 572, 586 N.W.2d 452 (1998); *Geringer v. City of Omaha,* 237 Neb. 928, 934-35, 468 N.W.2d 372, 377 (1991).

To provide objectivity to the implementation of the required TELRIC methodology, the FCC has required that cost models used to set UNE rates be both "transparent" and "verifiable."[4] As the FCC has explained, cost studies "can be difficult to verify, and thus are more easily manipulated by the advocates."[5] Thus, it is essential that state commissions base their rate determinations only on assumptions and inputs to cost models that are explained with specificity, and verifiable based on evidence in the record. The FCC has stressed repeatedly that it is improper to base UNE rates on "unsupported" assertions of "expert" or other witnesses.[6] The Eighth Circuit has similarly admonished state commissions not to place undue reliance in UNE rate proceedings on the opinions of their staffs.[7]

This Commission has applied these principles in past cost dockets. As noted in the Commission's order approving the rates established in Docket C-2516, "Courts have recognized that TELRIC rates should reflect the cost of building and operating a replacement network using the most efficient technology available." This Commission also observed in its C-2516 order that "TELRIC compliant cost models should use realistic inputs as opposed to imaginary costs."

---

[4] *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, 18 FCC Rcd. 18945 ¶ 41 (FCC rel. Sep. 15, 2003) ("*TELRIC NPRM*") .

[5] *Review of the Section 251 Unbundling Obligations of Local Exchange Carriers*, First Report and Order, 18 FCC Rcd. 16978, ¶ 99 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*").

[6] *See, e.g., In the Matter of Petition of WorldCom, Inc. for Preemption of the Jurisdiction of the Virginia Corporation Commission,* Memorandum Opinion and Order, 18 FCC Rcd. 17722 ¶ 274 (FCC rel. Aug. 29, 2003) ("*Virginia Arbitration Order*") ("In the *Inputs Order*, the Commission generally declined to rely on unsubstantiated witness opinion to support a party's cost proposal, and we similarly decline to do so here.").

[7] *Southwestern Bell Telephone Co. v. Missouri Public Service Commission*, 236 F.3d 922, 925 (8th Cir. 2001) *rev'd on other grounds, AT&T Communications of the Southwest, Inc. v. Southwestern Bell Telephone Co.*, 535 U.S. 1075 (2002).

As to zones, 47 CFR § 51.507(f) permits "at least" three different zones, "to reflect geographic cost differences." Thus, the Commission has the requisite authority to create six different zones, but all zones must reflect cost differences. The only possible definition of "cost" in section 51.507(f) must refer to TELRIC principles. Thus, in order to create six different zones, the cost differences between the zones must reflect TELRIC principles.

Also, the Order is not clear as to whether the proposal is to establish new rates and zones only for UNE loops used for residential purposes, or for all UNE loops. The Order does not mention differing rates for business and residential loops, but the Unifying Method appears only to reallocate revenue for residential loops based on an allocation of costs to serve households from the NUSF-26 Distribution Model. The Unifying Method does not consider either hypothetical revenue from business loops or the allocation of business loop costs between in-town and out-of-town areas. The Commission cannot provide different rates for business and residential loops, or base prices only on residential loop revenue, pursuant to 47 CFR § 51.503(c), which provides: "The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide."

Overview of the Unifying Method

Instead of first developing the total costs for loops in each zone as required by FCC rules, the proposed Unifying Method begins with an estimate of total residential access lines (Line 1). The derivation of this estimate is unclear, though it appears

based on Qwest's reporting to the Commission for universal service fund purposes. Qwest's most recent internal records indicate that Qwest serves more than 350,000 access lines in Nebraska, rather than the 185,455 residential access lines reflected in Line 1. Line 1 does not include any estimate of "the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services," as required by 47 CFR § 51.511(a). The Line 1 residential loop estimate is then multiplied by the Qwest benchmarked rates from the Compliance filing for each zone (Line 2) to yield a "Maximum UNE-L Revenue at Current Rates" (Line 3).

The revenue figure from Line 3 is then allocated by a series of calculations from the Distribution Model used in Docket NUSF-26. The first step in these calculations is to take the number of households (Line 4) – which for Zone 1 is twice the number of residential access lines appearing in Line 1 – and multiplies that number from the "[Household] Weighted Expected Loop Cost (E(LC))" from the NUSF-26 Distribution Model (Line 5) to get an "Expected Loop Revenue (E(LR))" for each of the proposed six zones (Line 6). It is worth observing that the monthly Expected Loop Revenue based on the Distribution Model costs is more than twice the Maximum UNE-L Revenue at Current Rates (Line 3) that the Unifying Method seeks to reallocate, as shown in the below table:

	Zone 1	Zone 2	Zone 3	Total
Line 3 Maximum UNE-L Revenue at Current Rates	$1,563,790	$820,981	$1,714,476	$4,099,246
Line 6 Revenue Expected Using Distribution Model Costs and Households	$4,645,480	$1,760,299	$3,270,926	$9,676,705
Difference	*$3,081,691*	*$939,318*	*$1,556,450*	***$5,577,459***

The Expected Loop Revenue from Line 6 for each of the six proposed zones is then divided by the Expected Loop Revenue for the in-town and out-of-town zones for each of the three existing zones, to get an Expected Loop Revenue Distribution Factor (Line 7). This Distribution Factor is then applied to the lower Line 3 revenue estimates to yield a proposed revenue amount for UNE loops in each of the six proposed zones in Line 8. That proposed revenue amount in Line 8 is then divided by the number of in-town and out-of-town residential access lines in Line 9 (the derivation of this number is also uncertain) to yield the proposed UNE loop rates in Line 10.

The Proposed Unifying Method Contains No Evidence of TELRIC Principles.

The proposed "Unifying Method" is thus not a method to determine the total element long-run incremental cost of providing loops in any of the six new zones proposed in the *Order,* but rather a method to reallocate Qwest's hypothetical, potential revenue from loops used for residential customers among all (business ***and*** residential) loops "in-town" and "out-of-town" areas of the current zone configuration. The Unifying Method does not determine the costs of UNE loops in any of the six proposed zones, and does not attempt to divide those costs by the number of units Qwest is likely to provide to requesting carriers in each zone, as would be required by the FCC's ordered TELRIC methodology.

The Distribution Model is not a TELRIC study, and Docket NUSF-26 was not intended to determine the costs of providing any UNEs, or loops in particular. NUSF-26 was aimed at allocating a finite universal service fund, and targeting that limited fund to high-cost, out-of-town areas. More specifically, testimony in Docket NUSF-26 revealed that the Distribution Model itself was not intended to determine any costs, but was simply used to determine a basis for determining the share of NUSF high cost funds each eligible telecommunications carrier ("ETC") would receive. Dr. David Rosenbaum testified at the June 18, 2003 hearing in NUSF-26 that the Distribution Model was motivated by a policy desire to allocate NUSF distributions, not to determine the TELRIC-based costs of providing UNE loops those areas.[8] Indeed, the very reference to the model as a "Distribution" model confirms its purpose to determine distribution, not cost. This description is consistent with the history of the Benchmark Cost Proxy Model ("BCPM") cost model on which the Distribution Model is based. The BCPM was originally developed to determine USF distributions for universal service purposes, not to determine TELRIC rates for UNEs.

Moreover, the Distribution Model used the BCPM in a way inconsistent with the TELRIC determination of UNE loop rates. The Distribution Model determined costs for serving "households," and did not consider the cost of loops used to serve businesses, thus excluding from its consideration many loops that must be considered in a TELRIC

[8] NUSF-26, Hearing Transcript, June 18, 2003, p. 119, lines 23-24 ("[W]e want to design the allocation method so it's -- it will support service in high-cost areas."); p. 127, lines 5-7 ("What we're really focusing on is a methodology for determining each NETC's share of whatever the fund might be.")

proceeding. Ignoring business loops, which are primarily located in-town, will have the effect of decreasing the share of costs borne by in-town loops, and thus artificially depresses in-town loop rates and artificially increases out-of-town loop rates. Also, Dr. Rosenbaum's testimony that the Distribution Model was created to allocate support to high-cost, out-of-town areas indicates that the Distribution Model may have allocated too many costs to out-of-town loops, ignoring or undervaluing important shared costs such as feeder cable. The allocation of costs between in-town and out-of-town loops must be performed with a view towards developing TELRIC rates, not to direct support (or costs) to out-of-town areas or to develop cost allocations only for "households" and the loops that serve them. Otherwise, in-town loop rates will be priced below cost, and out-of-town loops above cost. Therefore, the NUSF-26 Distribution Model cannot be a basis for determining TELRIC costs in this proceeding, fails to comply with FCC rules and applicable case law, and must be rejected.

Finally, there are several mechanical reasons why the Unifying Method is not TELRIC-compliant. The Unifying Method does not appear to account for the current and declining demand for loops due to several market factors. This issue must be explored with discovery and hearing testimony. In addition, the Unifying Method fails to apply TELRIC principles in Zone 1, because it fails to account for the fact that Qwest is no longer required to unbundle loops in several Omaha wire centers, pursuant to the FCC's ruling in Qwest's petition for forbearance from certain unbundling requirements in FCC WC Docket 04-233, reflected in the FCC's September 16, 2005 order in that docket (FCC release 05-170). 47 CFR § 51.511(a) requires that in order to determine the per-unit cost of a network element, the TELRIC for the element is divided by "the

sum of the total number of units of the element that the incumbent LEC is *likely to provide* to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is *likely to use* in offering its own services." (emphasis added). Since Qwest is not likely to provide the loops in wire centers covered by the FCC's forbearance order to requesting telecommunications carriers except at market rates, those wire centers must be excluded from any TELRIC-based rate determinations. Excluding these wire centers would have the effect of increasing the TELRIC rates for the remaining loops in Zone 1.

The Unifying Method Ignores The Only Evidence of Cost Contained In Its Proposal.

Even if the NUSF-26 Distribution Model were intended to determine TELRIC-based loop costs, the Unifying Method ignores the loop costs developed by that model, which is further evidence that both the Unifying Method and the Distribution Model are inappropriate bases for determining costs in this proceeding. Line 5 of Exhibit A attached to the Order reflects "HH Weighted Expected Loop Cost (E(LC))." Setting aside the fact that the term "expected" further reinforces the failure of the Distribution Model to develop an ***actual*** TELRIC loop cost, the Order does not explain how these values were determined, how the weighting was determined, or other important facts. These facts must be explored through discovery, testimony, and cross-examination.

However, even if it could be argued that Line 5 reflects the in-town and out-of-town TELRIC loop costs, the Unifying Method applies several other modifications to reallocate loop revenue, rather than simply accepting the costs purportedly determined by the Distribution Model. These adjustments result in proposed loop rates between

25% and 43% lower than reflected in the "expected" loop costs based on the Distribution Model. Any need to adjust the costs determined by the Distribution Model proves either that the Distribution Model is not TELRIC-compliant, or that the Unifying Method's adjustment methodology is not TELRIC-based, or more likely, both.

The Proposed Unifying Method Fails Even To Properly Reallocate Loop Revenue.

Even if reallocating potential loop revenues was a proper methodology for determining TELRIC prices for in-town and out-of-town loops, the Unifying Method fails to properly do so. First, the Unifying Method includes revenue only from 185,455 ***residential*** loops, and excludes business loops. Qwest serves more than 350,000 access lines in Nebraska, and this line should reflect the sum of Qwest's retail access lines plus wholesale loops, even under the incorrect methodology reflected in the Unifying Method. Line 3 of Exhibit A reflects "Maximum UNE-L revenue at current rates," but is determined based on the current loop rates multiplied by ***residential*** access lines – not total loops. Then, the theoretical revenue from residential loops is compared to the "expected" loop costs from the Distribution Model multiplied by "households," continuing the omission of business loops from the Unifying Method's analysis.[9] These calculations and comparisons are then used to develop a rate that apparently would apply to all loops, whether used in residential or business applications. The omission of business loop revenue from the Unifying Method would have the effect of decreasing Qwest's revenue from UNE loops by more than $1.1 million per month,

[9] It is also unclear that the use of "total residential access lines" in Line 1 and the differently-derived "households" in Line 4 is logical. In fact, it is unclear how the figures in Line 4 were derived at all.

and significantly decreasing the average UNE loop rate for each of the three existing zones, as shown in the below table:

	Nebraska UNE-L Rates and Monthly Max Revenue	In - Town			Out of Town		
		1	2	3	1	2	3
1	Current Zone Avg UNE-L Rates	$12.14	$28.11	$62.49			
2	Staff Proposed UNE-L Rates	$10.97	$9.33	$9.93	$31.53	$93.20	$172.94
3	Dec 2005 Qwest Lines (retail plus wholesale)	262,012	38,024	30,285	11,313	7,986	6,217
4	Current Max UNE-L Rev - Ln 1 * Ln 3	$ 3,180,826	$ 1,068,855	$ 1,892,510	$ 137,340	$ 224,486	$ 388,500
5	Staff Proposal Max UNE-L Revenue - Ln 2 * Ln 3	$ 2,874,523	$ 354,719	$ 300,606	$ 356,719	$ 744,302	$ 1,075,142
6	Change - Ln 13 - Ln 12	$ (306,303)	$ (714,136)	$ (1,591,904)	$ 219,380	$ 519,816	$ 686,642
7	**Net Change - Sum of Ln 6**	**$(1,186,506)**					
8	Staff Proposal Zone Avg UNE-L Rates	$11.82	$23.89	$37.69			

The FCC prohibits pricing loops differently "on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing those elements uses them to provide."[10] The Unifying Method assumes that Qwest's reallocated prices for ***all*** loops – both business and residential – should only cover the revenues Qwest previously obtained for residential loops alone. That assumption prices loops on the basis of the class of customers served by requesting carriers, and therefore violates Rule 51.503(c). Including the revenue from business loops in the Unifying Method calculations would significantly increase the proposed loop rates, even under the improper Unifying Method.

Including business loop ***costs*** in the Distribution Model would also change the

[10] 47 CFR § 51.503(c).

result of the Unifying Method. Since the Distribution Model examined only the loop costs associated with serving households – and not businesses – the Distribution Model underestimates total costs. Excluding business loop costs alters the results of the Distribution Model's Expected Loop Revenue Distribution (Line 7) significantly, because most business loops are located within towns. Thus, the result of the error is to considerably understate expected in-town loop revenue. As a consequence, the Expected Loop Revenue Distribution in Line 7 understates the percentage share of loop revenue to be gained from in-town loops, and accordingly overestimates the share of loop revenue to be gained from out-of-town loops. This would have the effect of resulting in artificially depressed in-town loop rates, even if the error of excluding potential business loop revenue from Line 1 were corrected. As a result of these two key errors – excluding revenue from business loops in Line 1 and excluding costs of business loops in lines 4-7 – the proposed approach simply does not make sense, and can only be described as confiscatory.

No Currently Updated TELRIC-Compliant Cost Study Exists To Determine Loop Costs On a Sub-Wire Center Level in Nebraska.

The Order asked for comments on an alternative methodology or methodologies that might be preferable to the staff's proposals. No such alternative presently exists for Nebraska, assuming the Commission seeks to divide and reallocate UNE loop zones on a level below the wire center. Qwest has prepared studies for a statewide average in-town zone allocation in Wyoming, but the models used there required hundreds of hours of research to properly locate in-town and out-of-town loops, and the model was not designed to examine in-town costs for each wire center, but rather a statewide average.

A completely new study would have to be developed from scratch in order to determine TELRIC-based costs in Nebraska under the proposed six-zone structure. All currently updated and existing TELRIC cost models are designed to determine costs of providing UNEs on a wire center level. This is essential. A proper model would have to properly allocate loop investment among in-town and out-of-town areas, among other things. Current models do not contain these key factors for Nebraska, and thus cannot accurately provide TELRIC-compliant loop rates. Qwest can provide more detailed, factual analysis of these problems in testimony.

The Commission Has Requisite Authority to Create More Than Three Zones Based on Cost Differences, But The Proposed Zone Splits Are Not Based on TELRIC Costs and Represent Bad Policy.

Apart from legal considerations, splitting each wire center into in-town and out-of-town zones represents bad policy if not done on a TELRIC basis. First, to the extent that UNE loop rates are to approximate the incremental costs an efficient requesting carrier would incur to provide the loops itself, splitting up wire centers into in-town and out-of-town zones makes it difficult to yield results that reflect those principles. Carriers do not design wire centers on an in-town and out-of-town basis. Indeed, Qwest provides loops to all consumers in a wire center – not just the ones in town. Important portions of the loop element are shared, such as feeder cable. Although the precise details of the methodology are not known at this time, it appears the Unifying Method relies on a misallocation of the shared costs between in-town and out-of-town loops, the result of which injures Qwest and provides a windfall to requesting carriers. Without a proper allocation of shared costs, the proposed "doughnut" approach to determining

zones[11] tells requesting carriers that they need not share in the costs of providing loops to high-cost areas outside of town, but can instead cherry-pick the cheapest customers and cheapest loops in town, ignoring out-of-town customers. Qwest isn't afforded those choices when it designs its network. Accordingly, a misallocation of shared costs in the proposed "doughnut" zoning approach not only violates TELRIC principles, it would represent bad policy, because the costs of serving an entire wire center would not be properly allocated to purchasers of in-town loops.

These problems are exacerbated by the structure and amount of the NUSF high cost fund. The support provided to Qwest under the fund does not, and given recent reductions in the surcharge, cannot provide Qwest with the costs required to fund out-of-town loops. The proposal in this docket highlights the insufficiency of the NUSF fund in this regard, as Qwest does not receive NUSF distributions in amounts anywhere near the proposed out-of-town loop rates, much less the costs determined by the NUSF-26 Distribution Model. But given a finite fund size, NUSF high cost distributions must be focused on out-of-town areas for both incumbent and competitive ETCs, and competitive ETCs must no longer receive high-cost support for any in-town customers, regardless of the result in this docket, Docket NUSF-50 Progression Order No. 2,[12] or any of the other progression orders in Docket NUSF-50. Otherwise, the Commission will doubly reinforce the existing incentives for competing carriers to seek only in-town customers: once by reducing in-town loop rates below TELRIC, and again if competitive

[11] Several in the industry have referred to proposals similar to the zoning approach outlined in the Order as a "doughnut" approach. Establishing a different in-town zone, surrounded by an out-of-town zone, would create several "doughnut" shaped sets of zones across Nebraska.

[12] Docket NUSF-50 Progression Order No. 2 seeks to address the issues surrounding porting of NUSF high cost support. The comment cycle in that docket trails the comment cycle in this docket by a few weeks, and Qwest supports that timing structure, because these dockets are inextricably intertwined.

carriers continue to receive ported NUSF support for the below-TELRIC in-town loops.

In addition, different rates for in-town and out-of-town loops can actually harm competition, particularly at the allocations proposed in the Order. The proposed rates for out-of-town loops are so high, it is difficult to imagine any circumstances under which a requesting carrier would seek to purchase one. In addition, it would be difficult for a prospective UNE loop competitor to determine whether a customer she is prospecting near the edge of town is served by a loop costing less than ten dollars or almost two hundred. Many CLECs do not like the "doughnut" approach to TELRIC zoning for these reasons. Indeed, AT&T, perhaps the largest and until recently the most contentious CLEC, voiced these very concerns in UNE loop zoning and pricing proceedings in Arizona (a copy of the relevant testimony is attached as Exhibit A). In that proceeding, AT&T ultimately concluded that zoning methods which split up wire centers "represent implementation concerns, and they do not represent costs in the most accurate way. . . . Thus, the decision on how to group customers into zones should be made based on cost differences between customers, rather than some proxy representing cost differences, such as density, doughnuts, or switch size. . . . Since the loop is the most important element to be deaveraged and each loop is uniquely assigned to a wire center, the wire center is the most practical and simple method of identifying customers."

Implementation Costs Would Be Prohibitively High.

The Unifying Method proposes different rates be charged for in-town and out-of-town loops within wire centers. The Unifying Method does not, however, discuss how the boundaries between in-town and out-of-town loops will be determined. Qwest

currently charges for all loops and other UNEs on a wire center basis. Deaveraging UNE loop rates within wire centers will require Qwest to invest potentially millions of dollars to locate every loop, assign to each loop a designation of "in-town" or "out-of-town," and update its billing and recordkeeping systems to reflect these changes. These costs represent additional harm to Qwest, and will lead to potential disputes between Qwest and requesting carriers as to whether or not certain loops are in-town or out-of-town. Combined with the other problems with the Unifying Method identified above, these implementation problems represent additional reasons to reject the Unifying Method and proposed six-zone plan. The only way to fix these problems is to properly allocate the costs of implementation to requesting carriers as part of the TELRIC rate for loops, which the Unifying Method fails to do. Alternatively, to the extent that the reallocation of zones and loop rates is designed to rationalize UNE loop rates with NUSF policy, the Commission could allocate NUSF monies to avoid saddling Qwest with uncompensated costs to implement these policy goals.

Conclusion

Qwest's comments here reveal far too many problems with the Unifying Method for its use in setting UNE loop rates in Nebraska. It simply represents an impermissible shortcut to proper TELRIC-based pricing of these loops, whatever zone configuration is ultimately selected. If the Commission seeks to divide the current zones into in-town and out-of-town components, the Commission must do so through a full, TELRIC-compliant cost docket that attempts to establish the cost of the loops carriers are likely to request from Qwest in each of the six proposed zones. While the process may take some time and effort, those efforts are important to create a competitively neutral rate

structure under which Qwest would not end up subsidizing its competitors by selling in-town loops below its cost.

Regardless of the method used to determine loop rates in the future, the Commission must also take care to avoid subsidizing carriers for in-town loops through the NUSF. The current "porting" structure of the NUSF high cost fund allows competitive ETCs to take the support Qwest is given for out-of-town customers if they gain an in-town customer.[13] Any porting scheme must avoid this problem. The proposed resolution of this problem in Docket NUSF-50 Progression Order No. 2 represents an important first step in this regard, but the issues in that docket are inextricably intertwined with the issues in this docket. Accordingly, Qwest requests that the Commission consider the two dockets together – along with the other two progression orders in NUSF-50 – in order to achieve a coordinated, rationalized NUSF policy for Nebraska. Qwest looks forward to continuing to work with the Commission to achieve such a result, and trusts that the proposal in this docket represents just a first step in a collaborative, interactive evidentiary process, rather than a quick means to a desired end.

[13] Porting for business customers is no longer permitted under this Commission's orders, but pursuant to orders in NUSF-26 and C-3448, competitive ETCs still receive ported support for business customers obtained before November 3, 2004.

Dated Wednesday, May 3, 2006.

Respectfully submitted,

QWEST CORPORATION

By: _____
Jill Vinjamuri-Gettman #20763
GETTMAN & MILLS LLP
10250 Regency Circle Suite 200
Omaha, NE 68114
(402) 320-6000
(402) 391-6500 (fax)
jgettman@gettmanmills.com

Timothy J. Goodwin
QWEST SERVICES CORPORATION
1801 California, Ste. 1000
Denver, CO 80202
303-383-6612
303-296-3132 (fax)
tim.goodwin@qwest.com

ATTORNEYS FOR QWEST CORPORATION